

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIHISA FUJIOKA
and HIROTOMO MUKAI

Appeal No. 96-1366
Application 08/105,617¹

HEARD: March 5, 1998

Before CALVERT, FRANKFORT and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's
final rejection of claim 3. Claims 1 and 2 have been

¹ Application for patent filed August 13, 1993.

canceled. Appellants' claimed subject matter is disposable absorbent pants.

Claim 3 recites:

3. Disposable absorbent pants comprising a front body (2), a rear body (3) and a liquid absorbent panel (15) disposed between said front body (2) and said rear body (3), said pants having a waist opening, two leg openings (10) and a crotch area extending between said leg openings (10),

(a) each said body (2, 3) consisting of a liquid-permeable topsheet (4), a liquid-impermeable backsheet (5) and a mass of absorbent material (6) sandwiched therebetween,

(b) each body (2, 3) having spaced apart side edges, each side edge of said front body (2) being detachably joined in overlapping relationship to a side edge of said rear body (3) by a plurality of fastener means (13),

(c) each body (2, 3) having bottom edges, portions of the bottom edges of said bodies (2,3) being spaced apart from each other to form leg openings (10) and the remaining portions of the bottom edges of said bodies (2,3) being bonded together along a convexly curved welding line (8) to thereby form a convexly curved crotch zone that extends between said leg openings (10), said convexly curved crotch zone having an apex (9) that is closer to said waist opening than are said leg openings (10),

(d) said liquid-absorbent panel (15) having a generally U-shaped configuration

(i) that is positioned in said crotch zone and bonded to the interior surface of said pants,

(ii) the open ends of said U-shaped configuration facing toward said waist opening,

Appeal No. 96-1366
Application 08/105,617

(iii) the closed end of said U-shaped configuration being mounted so as to float at a spaced distance of at least 10 mm away from said convexly curved welding line (8) of said convexly curved crotch zone.

THE REFERENCES

The following references were relied on by the examiner:

Glassman	4,022,210	May 10, 1977
Repke et al. (Repke)	4,205,679	Jun. 3, 1980
Karami et al. (Karami)	4,427,408	Jan. 24, 1984

THE REJECTION

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter in which the applicants regard as the invention.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Karami in view of Repke and Glassman.²

² The examiner indicates in the answer that the obvious type double patenting rejection is not before us because the copending application has been abandoned (answer at page 2).

Appeal No. 96-1366
Application 08/105,617

Rather than reiterate the entire arguments of the appellants and the examiner in support of their respective positions, reference is made to appellants' brief (Paper No. 11) and the examiner's answer (Paper No. 15) for the full exposition thereof.

OPINION

In reaching our conclusions on the issues raised in this appeal, we have carefully considered appellants' specification and claims, the applied references and the respective viewpoints advanced by the appellants and the examiner. As a consequence of our review, we have made the determination that the rejections of the examiner should be sustained. Our reasons follow.

Turning first to the examiner's rejection of claim 3 under 35 U.S.C. § 112, second paragraph, we initially note that the purpose of the requirement stated in this paragraph is to provide those who would endeavor in future enterprise to approach the area circumscribed by the claims of the patent with the adequate notice demanded by due process of law, so

Appeal No. 96-1366
Application 08/105,617

that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement and dominance. In re Hammack, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). The inquiry, as stated in In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971) is:

"...whether the claims do, in fact, set out and circumscribe a particular area with a reasonable degree of precision and particularity.... [t]he definiteness of the language employed must be analyzed--not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art."

In the instant case, paragraph (a) of claim 3 recites:

each said body (2,3) consisting of a liquid- permeable topsheet (4), a liquid-impermeable backsheet (5) and a mass of absorbent material (6) sandwiched therebetween.

This paragraph, by its use of the phrase "consisting of", limits the structure of each body to a liquid-permeable topsheet, a liquid-impermeable backsheet and a mass of absorbent material sandwiched therebetween. See MPEP § 2111.03. However, the succeeding paragraphs of claim 3 recite

that each body includes additional structure. For example, paragraph (b) of claim 3 recites that each body also has a plurality of fastener means and paragraph (c) recites that the bottom edges of each body are bonded together along a convexly curved welding line. These recitations of additional structure are inconsistent with the recitation "consisting of" in paragraph (a), and thus render indefinite the scope of claim 3. We will therefore, sustain the examiner's rejection of claim 3 under 35 U.S.C. § 112, second paragraph.

We additionally note that, because of the use of "consisting of" in paragraph (a), it is not clear from the language of claim 3 whether the fastener means and the welding line are included in the combination.

We turn next to the examiner's rejection of claim 3 under 35 U.S.C. § 103 as being unpatentable over Karami in view of Repke and Glassman. It is the examiner's position that Karami teaches all the claimed structure except for (1) "each side edge of said front body... being detachably joined in overlapping relationship to a side edge of said rear body... by a plurality of fastener means" and (2) a "liquid-absorbent panel" as set forth in subsection (d) of claim 3.

Appeal No. 96-1366
Application 08/105,617

The examiner has cited Repke for teaching the interchangability of detachably joined sides and seam sealed sides. In regard to the recitation in claim 3 of a liquid absorbent panel, the examiner states:

To employ an auxiliary pad as taught by Glassman on the Karami et al device, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would provide easy removal but prevent displacement during use and the desirability of an insert pad in Karami et al and such features in any disposable absorbent article. [examiner's answer pages 4-5].

The examiner further states that it would have been an obvious matter of design choice to modify the Karami reference so that the auxiliary panel floated at a "spaced distance of at least 10mm away from said convexly curved welding line."

We agree with the analysis of the examiner and further observe that an auxiliary panel placed in the pants disclosed in Karami and depicted in Fig. 4 would inherently float above welding line 32, as such auxiliary pad could not be adhered directly to the welding line. In addition, Karami discloses that the additional pads may be inserts (Col. 2,

Appeal No. 96-1366
Application 08/105,617

lines 62-63) which at least suggests that the additional pads are not adhered to the welding line.

Appellants argue that there are advantages of the floating panel design. We do not find this argument persuasive because the advantages were not disclosed in appellants' disclosure. In fact appellants' specification states that it is also within the scope of the invention to arrange the auxiliary panel so that the bottom of the panel is in contact with the top surface of the diaper's crotch zone even in a curved state. (See specification at pages 6-7). In addition, we agree with the examiner that the placement of the auxiliary panel at a distance of at least 10 mm would have been an obvious matter of design choice, as appellants' specification attaches no particular significance to this feature. Therefore, in our view the selection of a specific distance at which the auxiliary panel floats above the welding line is a matter of engineering design choice and does not patentably distinguish the claimed invention over the prior art. See In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

The decision of the examiner is affirmed.

Appeal No. 96-1366
Application 08/105,617

No time period for taking subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
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CHARLES E. FRANKFORT)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

Appeal No. 96-1366
Application 08/105,617

FRED PHILPITT
99 CANAL CENTER PLAZA, SUITE 300
ALEXANDRIA, VA 22314